IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 222 of 2006
With
CIVIL APPLICATION No.1410 OF 2006
Date of Decision:07/02/2006

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UNITED INDIA INSURANCE CO. LTD - Appellant(s)
Versus
UDAYSINH CHANDANSINH THAKOR & 2 - Defendant(s)
(for full cause title, see next page)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Smt.Justice Abhilasha Kumari,Judge

Whether approved for reporting? Yes

For the Appellant

Mr.V.P.Nanavati, Advocate

For the Respondents:

Ms.Shaili A.Kapadia,Advocate,for respondent No.1

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Per : THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI (ORAL)

1. This appeal has been filed by the United India Insurance Co. Ltd. against the judgment and

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Whether reporters of Local Papers may be allowed

to see the Judgment? Yes

award passed by the Motor Accident Claims Tribunal (Aux.), Vadodara dated 16.9.2005 in M.A.C.Petition No.756 of 1996. The M.A.C.Tribunal has awarded a total compensation of Rs.12,05,000/- to the respondent No.1 - claimant. The appellant is challenging the impugned judgment and award to the extent of Rs.7,05,000/- only. The main ground of challenge in the present appeal is that the inferences drawn and the conclusions arrived at by the M.A.C.Tribunal for awarding the compensation are erroneous, inasmuch as they are based on an incorrect appreciation of the evidence on record, especially the medical evidence, which has persuaded it to come to the conclusion that, looking to the disability suffered by the respondent No.1- claimant, the compensation of Rs.12,05,000/- deserves to be awarded.

2. To test the veracity of this contention the

brief facts giving rise to the claim will have to be recorded. This is a case of injury which has resulted in permanent disability to the extent of 70% in both the legs. The respondent No.1-claimant was riding on his bicycle on the fateful day i.e. on 4.1.1996 at about 5.15 P.M. When he reached near Jyoti Road crossing near Modern Farm, while riding his bicycle on the left hand side of the road, the opponent No.1 came from behind on a scooter,bearing Registration No.GJ-6/J-270 with full speed, and gave a push to the bicycle of the respondent No.1-claimant in a careless manner, which resulted in the accident. The respondent No.1-claimant was working as a labour contractor in Alembic Co. and used to earn Rs.5000/- per month. Due to the accident in question, his left leg was fractured and he was unable to go to work. The driver of the scooter, which caused the accident, took the claimant to an Orthopaedic Surgeon, Dr.P.N.Dholakia. He was admitted in the hospital for 2 days and his left

leg, which was fractured, was plastered. Thereafter, the respondent No.1-claimant had to attend the hospital every 10 days and, in all he visited the hospital 6 times. Even after the removal of the plaster he had to go to the hospital for exercise as per the instructions of the Doctor and had to take medicines and special diet. In view of the difficulty faced by him, he had to keep two persons to attend to him. Due to the accident, the respondent No.1-claimant was unable to attend to his work for about 4 months and as a result he had to bear the loss of Rs.20,000/-. He was unable to get any further contracts which led to a loss of income.

3. The respondent No.1-claimant suffered permanent physical disability and was unable to work. In addition to the fracture, the respondent No.1-claimant was also injured behind the head and other parts of the body, and was having a serious pain in the neck. In spite of taking

treatment for over two years, he did not recover and Dr.Dholakia advised him to approach a Neuro Surgeon, who opined that the cartilage of the neck and the membrane is damaged. The Neuro Surgeon, named Dr.Bhavin Upadhya treated the claimant but still he did not recover. On the contrary, as a result of the injuries sustained in the accident, the respondent No.1-claimant developed paralysis below the waist and was taken to a Neuro Surgeon Dr.Chetan Trivedi, who advised that an operation would be necessary. The respondent No.1-claimant then went to Neuro Surgeon Dr. Jwalit Sheth of SSG Hospital, Vadodara and was admitted as an indoor patient in SG Hospital. On 3.8.1999 he was operated upon on the neck. Being a risky operation, he remained hosptialised till 7.8.99 and thereafter, he was advised to go to the Neuro Surgeon and continue with physiotherapy. However, there was no improvement in the paralysis faced by the respondent No.1-claimant and on 5.12.2001 the

respondent No.1-claimant went to SSG Hospital for assessment of the permanent defect. After examination, the Doctor assessed that the permanent physical disability due to paralysis on both the legs faced by the respondent No.1-claimant, was to the extent of 70%. The permanent disability certificate is produced at Exh.38 dated 26.9.1997.

4. We have heard Mr.V.P.Nanavati, learned counsel for the appellant and Ms.Shaili Kapadia, learned counsel for the respondent No.1. The main ground of challenge urged by the learned counsel for the appellant is that the Neuro Surgeon, who has issued the disability certificate has not been examined and the said disability certificate has not been proved. Therefore, the same cannot be read in evidence. It has further been argued that the disability certificate Exh.39 dated 25.6.99 has been given by the Orthopaedic Surgeon who has only treated the fracture of the left tibia of the claimant as a

result of the vehicular accident in January 1996, and that the said Doctor was not competent to give a certificate to the effect that the respondent No.1-claimant has got paralysis of 70% in both legs and that consequently, the M.A.C.Tribunal has come to an erroneous conclusion on the basis of this evidence of the Doctor concerned and the disability certificate on record, that the respondent No.1-claimant suffered permanent disability, which has resulted in the awarding of the compensation to the tune of Rs.12,05,000/-.

5. It is not disputed that as a result of the accident that took place on 4.1.1996 the respondent No.1 developed various complications in addition to the fracture of the left leg. These complications also resulted in serious neurological problems which persisted for over two years and culminated in paralysis of both legs. The M.A.C.Tribunal has awarded

Rs.2,30,000/- towards medicine, transportation, attendance, special diet etc., Rs.9,00,000/- towards future economic loss and Rs.75,0000/- towards pain, shock and suffering.

6. Except for the contention raised regarding the appreciation of the medical evidence by the M.A.C.Tribunal, no other serious ground of challenge has been put forward by the appellant. We have scrutinised the material on record and are of the view that there is ample evidence on record on which the M.A.C.Tribunal has arrived at the conclusion that the respondent No.1-claimant suffered permanent disability in the form of paralysis of both legs to the tune of 70% as a result of the accident. It is not only the fracture of the left leg that was treated by the Orthopaedic Surgeon but there were also the neurological problems faced by the respondent No.1-claimant which resulted in paralysis, that has weighed with the M.A.C.Tribunal. Just because

Dr.Dholakia was an Orthopaedic Surgeon does not mean that he cannot testify about the medical condition and the paralysis of the respondent No.1-claimant, whom he has treated even after the accident and whose medical condition is seen and has been assessed, on the basis of the record of the Neuro Surgeon, such as the disability certificate to this effect. It is evident from the material on record that the injuries caused to the respondent No.1-claimant in the neck resulted in some defect in the spinal cord, which led, to his legs becoming paralysed. Dr. Dholakia, the Orthopaedic Surgeon has testified that on 5.7.2004 the respondent No.1 was brought to the Doctor by three persons as he was unable to walk without support, being paralysed in both legs. Looking to the material on record, it cannot be said that the evidence of Dr.Dholakia should have been disregarded merely because he, being an Orthopaedic Surgeon, was not competent to assess the other disability of the respondent

No.1-claimant i.e. the spinal cord injury suffered by him, which resulted in the paralysis.

7. It has to be kept in mind that the Motor Vehicles Act is a beneficial piece of Legislation and the procedure envisaged under it is a summary one, strict Rules of evidence are therefore, not applicable to proceedings under the Act. If any document is produced during the course of proceedings, the genuineness and probative value of which is not in doubt and which has not been proved to be false then, the Tribunal can look into the same and come to a just and reasonable conclusion on its basis. In the present appeal, it is not disputed that the Neuro Surgeon had given a certificate of permanent disability in favour of the claimant. Just because the said Doctor had retired and could not be examined,due to want of correct address in order to summon him, the contention that Exh.28/17 and Exh.27/18,(disability

certificates) cannot be read in evidence because the Doctor has not been examined to prove them on record, cannot be accepted. The appellant has not come up with any evidence to show that the said Certificates are not genuine ones. This is also not contended before us. In this view of the matter, since there is ample material on record pointing to the permanent physical disability suffered by the respondent No.1-claimant, the view taken by the Tribunal regrading the medical aspect of the case and awarding of compensation thereupon, cannot be faulted. It is sufficient that there should be material on record on which the Tribunal has determined the compensation to be awarded, which should be just and reasonable. In the present case there is material on record to support the findings arrived at by the M.A.C.Tribunal. To take a hyper-technical view and apply strict rules of evidence as per the provisions of the Evidence Act, in claims under the M.V.Act, would amount to defeating the very

object and purpose behind the enactment of this beneficial Statute, which is to provide immediate relief in the form of just and reasonable compensation to unfortunate victims of motor accidents or their legal heirs, as the case may be.

8. In view of the aforesaid reasons, we do not find any reason to interfere with the impugned judgment and award of the M.A.C.Tribunal dated 16.9.2005. The Appeal is therefore dismissed, as being devoid of any merit. **Amount deposited in the Registry under Section 173 of the Motor Vehicles Act, 1988, be transmitted to the Tribunal concerned for payment to the claimant(s) along with the amount to be deposited as per the Award within two months.**

9. In view of the dismissal of the Appeal, as above,the Civil Application for staying the execution of the award does not survive and the same stands disposed of accordingly.

(Bhawani Singh)
Chief Justice

(Smt.Abhilasha Kumari)

arg Judge